

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED 3/12/09



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: METHYL TERTIARY BUTYL ETHER (MTBE)
PRODUCTS LIABILITY LITIGATION

This document relates to:

Commonwealth of Puerto Rico, et. al.
v. Shell Oil Company, et. al., USDC-SDNY 07-10470
(SAS); USDC-PR 07-1505 (CCC)

Master File No: 1:00CV1898
MDL 1358 (SAS)

ORDER


Having considered the recently filed Notice of Voluntary Dismissal Under Federal Rule of Civil Procedure 41(a)(2) and Joint Stipulation as to Atlantic Trading Marketing, Inc., formerly known as Total Oil, Inc. (hereinafter referred to as "TOI/ATMI"), it is hereby:

ORDERED that TOI/ATMI is hereby dismissed, without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2) and according to the terms of the agreement of the parties as evidenced by the Notice of Voluntary Dismissal Under Federal Rule of Civil Procedure 41(a)(2) and Joint Stipulation as to TOI/ATMI filed on January 9, 2009.

In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation

Doc. 2297

SO ORDERED:


Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
March 12, 2009



Jan 9 2009
3:53PM

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: METHYL TERTIARY BUTYL ETHER (MTBE)
PRODUCTS LIABILITY LITIGATION

This document relates to:

Commonwealth of Puerto Rico, et. al.
v. Shell Oil Company, et. al., USDC-SDNY 07-10470
(SAS); USDC-PR 07-1505 (CCC)

Master File No: 1:00CV1898
MDL 1358 (SAS)

**NOTICE OF VOLUNTARY DISMISSAL UNDER FED. R. CIV. PROC. 41(a)(2)
AND JOINT STIPULATION AS TO TOTAL OIL, INC.**

TO THE HONORABLE COURT:

WHEREAS, on October 4, 2007, Plaintiffs, the Commonwealth of Puerto Rico and Commonwealth of Puerto Rico through the Environmental Quality Board (hereinafter referred to as "Plaintiffs"), served Atlantic Trading and Marketing Inc., formerly known as Total Oil, Inc. (hereinafter referred to as "TOI/ATMI") with the First Amended Complaint in the Civil Case No. 07-1505 (CCC), filed at the United States District Court for the District of Puerto Rico, which was consolidated in the MDL 1358 at the United States District Court for the Southern District of New York, Civil Case No. 07-10470 (SAS) (hereafter referred to as "the Litigation");

WHEREAS, Phillipe Khoury, President of TOI/ATMI, executed a Declaration on October 23, 2008 (the "Khoury Declaration", attached hereto as Exhibit A);

IT IS HEREBY NOTICED THAT this matter as to TOI/ATMI is dismissed, without prejudice, pursuant to Fed. R. Civ. Proc. 41(a)(2); and

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, that:

1. TOI/ATMI shall respond to any third party subpoenas in compliance with applicable laws.

2. Plaintiffs shall have the right to reinstate the present action against TOI/ATMI if the statements made in the Khoury Declaration prove to be untrue in any material way. Notwithstanding, claims cannot be reinstated against TOI/ATMI at any time after claims made in the Litigation against TPPRC (and/or any other company of the conglomerate of any direct or indirect subsidiary of the Total SA (hereinafter "TOTAL group")) are finished or settled with TPPRC and/or with any other company of the TOTAL group.

3. TOI/ATMI agrees to waive all timeliness defenses, including but not limited to statute of limitations, repose, laches, estoppel, or waiver defenses (including res judicata or issue preclusion), that it may have as a result of this voluntary dismissal of the claims included in the First Amended Complaint in the Litigation (to the extent such timeliness defense is not available as of the filing of the original Complaint), in the event of the following:

- a. Plaintiffs find any evidence that TOI/ATMI has imported, refined and/or distributed MTBE and/or gasoline containing MTBE into or within Puerto Rico; or

- b. Plaintiffs find any evidence that TOI/ATMI is responsible for contamination of the waters of the Commonwealth of Puerto Rico by MTBE.

This is subject to the provision that the claims cannot be reinstated against TOI/ATMI at any time after claims made in the Litigation against TPPRC (and/or any other company of the TOTAL group) are finished or settled, as stated above.

4. This Notice of Voluntary Dismissal and Joint Stipulation is not intended to affect any claims by or against any parties other than the Plaintiffs and TOI/ATMI.

5. The Plaintiffs and TOI/ATMI agree that the covenants under this Notice of Voluntary Dismissal and Joint Stipulation constitute adequate and sufficient consideration.

6. This Notice of Voluntary Dismissal and Joint Stipulation contains the entire agreement between the Plaintiffs and TOI/ATMI, and no statements, promises, or conditions made by any party or agent of any party to this Notice of Voluntary Dismissal and Joint Stipulation that is not contained herein shall be valid or binding.

7. This Notice of Voluntary Dismissal and Joint Stipulation may not be modified except by written agreement signed by the Plaintiffs and TOI/ATMI.

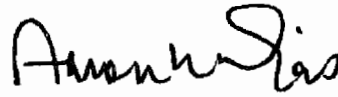
8. This Notice of Voluntary Dismissal and Joint Stipulation shall be governed by the laws of the Commonwealth of Puerto Rico.

The undersigned representatives of the Plaintiffs and TOI/ATMI certify that they are fully authorized to enter into the terms and conditions of this Notice of Voluntary Dismissal and Joint Stipulation, and to execute and bind such parties to this Notice of Voluntary Dismissal and Joint Stipulation.

Dated: January 9th, 2009.

/s Roberto Sanchez Ramos

Roberto J. Sanchez Ramos
Secretary of Justice of the Commonwealth
of Puerto Rico
P.O. Box 9020192
San Juan, Puerto Rico 00902-0192



Richardson, Patrick, Westbrook
& Brickman, LLC
Aaron R. Dias
Gordon C. Rhea
Special Counsel to the Secretary of Justice
1037 Chuck Dawley Blvd., Bldg. A
Mt. Pleasant, SC 29464

/s John K. Dema

Law Offices of John K. Dema, P.C.
John K. Dema
Special Counsel for the Secretary of Justice
1236 Strand Street, Suite 103
Christiansted, St. Croix
U.S. Virgin Islands 00820-5008

/s Orlando H. Martínez

Orlando H. Martínez Law Office
Orlando H. Martínez-Echevarria
Special Counsel for the Secretary of
Justice
701 Ponce de León Ave., Suite 413
Centro de Seguros Bldg.
San Juan, PR 00907

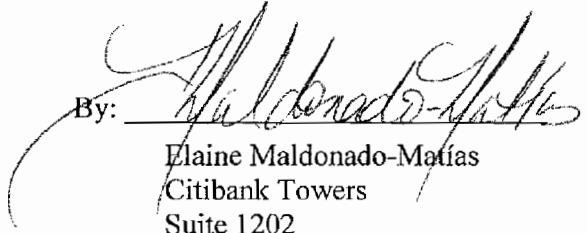
/s Michael D. Axline

Miller, Axline & Sawyer
Duane C. Miller
Michael D. Axline
1050 Fulton Avenue, Suite 100
Sacramento, California 95825

Attorneys for the Commonwealth of Puerto Rico
and the Commonwealth of Puerto Rico
through the Environmental Quality Board

SEPULVADO & MALDONADO, PSC

By: _____


Elaine Maldonado-Matias
Citibank Towers
Suite 1202
252 Ponce de León Ave.
San Juan, PR 00918
(787) 765-5656

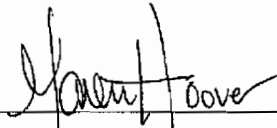
Attorneys for Defendant Atlantic Trading
and Marketing, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on 9th day of January 2009, I caused a true and correct copy of the foregoing NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO FED. R. CIV. PROC. 41(a)(2) AND JOINT STIPULATION AS TO TOTAL OIL, INC. to be served on all counsel via Lexis/Nexis File & Serve, on Plaintiffs' Liaison Counsel via e-mail to mdl1352@weitzelux.com and to Defendants' Liaison Counsel via e-mail to mdl1352@mwel.com.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in St. Croix, USVI, on January 9th, 2009.



Maren Hoover